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99TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
99-668

ORIGINAL

MARITIME AGREEMENTS ACT OF 1986

JULY 14, 1986.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. JONES of North Carolina, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

[To accompany H.R. 3662]

(Including cost estimate of the Congressional Budget Office)

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 3662) to provide for the negotiation of maritime agreements for the carriage of United States waterborne trade and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

On page 1, line 4, strike "1985" and insert "1986".

On page 2, line 12, after "States" insert "measured by long tons".

On page 2, line 16, strike "(a)" and insert "(1)".

On page 2, line 18, strike "servies;" and insert "services;"

On page 2, line 19, strike "(b)" and insert "(2)".

On page 2, line 21, strike "(c)" and insert "(3)".

On page 2, line 24, strike "(d)" and insert "(4)".

On page 3, line 4, strike "(a)" and insert "(1)".

On page 3, line 10, strike "(b)" and insert "(2)".

On page 3, line 12, strike "subsection (a) of this section" and insert "paragraph (1) of this subsection".

On page 3, line 15, before "A" insert "(a)".

On page 3, line 16, strike "4(a)" and insert "4(a)(1)".

On page 3, line 19, strike "(a)" and insert "(1)".

On page 3, line 22, strike "(b)" and insert "(2)".

On page 4, line 1 strike "(c)" and insert "(3)".

On page 4, strike lines 4 through 22.

On page 4, line 23, strike "(e)" and insert "(4)".

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On page 5, line 3 strike "(f)" and insert "(5)".
On page 5, between lines 4 and 5 insert

(b)(1) A commercial shipping agreement concerning the trade that is the subject of a maritime agreement may not contain provisions:

(A) allowing for the pooling of net revenues among the members of that commercial shipping agreement;

(B) restricting the participation of a vessel documented under the laws of the United States; or

(C) contravening the terms of the maritime agreement.

(2) If a commercial shipping agreement contains provisions violating paragraph (1) of this subsection, those provisions shall be considered violations under the Shipping Act, 1984 (46 App. U.S.C. 1701–1720) and shall be subject to the sanctions and penalties imposed by section 13 of that Act (46 App. U.S.C. 1712), as the United States Federal Maritime Commission determines appropriate.

On page 5, line 14, strike "(4)(a)" and insert "(4)(a)(1)".
On page 5, line 15, strike "(4)(a)" and insert "(4)(a)(1)".
On page 5, line 18, strike "(4)(a)" and insert "(4)(a)(1)".
On page 5, line 22, strike "(a)" and insert "(1)".
On page 6, line 1, strike "(b)" and insert "(2)".

PURPOSE

The purpose of this legislation is to require the President to negotiate bilateral cargo sharing agreements with any country whose trade with the United States is one percent or more of total U.S. foreign waterborne trade and in which U.S.-flag carriage is less than one-third. The bill also requires the President to negotiate a bilateral maritime agreement with any other country that requests such an agreement.

BACKGROUND AND DISCUSSION

Maritime Administration statistics for 1984 indicate that U.S.-flag vessels carry 4.3 percent of total U.S. trade. Broken down by type of service, U.S. vessels carry 21.5 percent of the liner trade, 3.9 percent of the tanker trade, and only 1.5 percent of the non-liner (bulk) trade. In the aggregate, U.S. flag carriage of total U.S. trade has declined by over 50 percent in the last 20 years. The U.S. merchant fleet now ranks fourth in the carriage of total U.S. trade. In the bulk trade, the U.S. ranks fourteenth. The Committee believes that the decline in U.S.-flag carriage of U.S. trade is detrimental to the economic and national defense requirements of the United States.

H.R. 3662 would reverse this decline by requiring bilateral cargo-sharing agreements, with major U.S. trading partners. At the present time, approximately 26 trading partners of the United States meet the trigger mechanism in the bill of one percent of U.S. trade and less than one-third U.S. carriage. In general, these trading partners represent the industrialized countries of Europe and the Far East, and the major oil exporting countries. The fol-

lowing table lists those countries meeting the trigger in 1983, the last year for which figures were available to the Committee.

TRADE PARTNERS WITH 1 PERCENT OF U.S. WATERBORNE FOREIGN TRADE ORIGIN/DESTINATION
CALENDAR YEAR 1983

[Thousands of long tons]

Rank and country	Total tons	Percent of U.S. trade
1. Japan	80,028	12.1
2. Canada	53,474	8.1
3. Mexico	49,965	7.6
4. Venezuela	31,639	4.8
5. Netherlands	26,037	4.0
6. United Kingdom	24,442	3.7
7. Indonesia	22,433	3.4
8. Republic of Korea	19,209	2.9
9. Algeria	18,379	2.8
10. Italy	15,853	2.4
11. Saudi Arabia	15,277	2.3
12. Nigeria	15,223	2.3
13. Brazil	14,986	2.3
14. Republic of China	14,552	2.2
15. Spain	13,951	2.1
16. Netherlands Antilles	13,613	2.0
17. West Germany	12,985	2.0
18. Belgium	12,224	1.8
19. People's Republic of China	11,723	1.8
20. U.S.S.R.	10,503	1.6
21. Bahamas	10,479	1.6
22. France	10,264	1.6
23. India	9,056	1.4
24. Australia	7,059	1.1
25. United Arab Emirates	7,016	1.1
26. Trinidad and Tobago	6,524	1.0

The Committee used the Department of Transportation, Maritime Administration publication "United States Oceanborne Foreign Trade Routes," June 1985, in compiling the table. That publication lists by long tons the top thirty trade partners of U.S. waterborne foreign trade on an origin/destination basis. The long ton measurements were recalculated to reflect percentages of total U.S. foreign waterborne trade. The Committee intends that the Maritime Administration determine those countries meeting the one percent trigger in the future by using a similar calculation.

The Committee believes that bilateral cargo-sharing agreements have proven an effective way to increase the U.S.-flag share of U.S. trade, and reflect a growing trend in international shipping. At the present time, the United States has bilateral cargo-sharing agreements with Brazil and Argentina. The United States is also renegotiating a bilateral agreement with the Soviet Union and may begin renegotiations with the People's Republic of China. In general, however, the United States has resisted bilateral agreements with U.S. trading partners.

Other industrialized countries in recent years have embraced the concept of bilateral cargo-sharing arrangements with their trading partners. In 1979, the members of the European Economic Community (EEC) agreed to accept the United Nations Conference on

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Trade and Development (UNCTAD) Code of Conduct for Liner Conferences. For liner conference carriage, the UNCTAD Code sanctions 40 percent cargo allocations for each trading partner. The Brussels reservation to the UNCTAD Code, agreed to by the EEC, is intended to provide that only the less-developed trading partner would reserve 40 percent of the trade involved. However, the Brussels reservation may not effectively ensure that most of the remaining 60 percent of the trade is not reserved to the vessels of only certain nations.

In addition to the UNCTAD Code, industrialized nations also allow other types of cargo arrangements to govern their trades, whether on a commercial or a governmental basis. Several developed countries allow less-developed trading partners to unilaterally reserve 40 percent of the cargo to their vessels. Japan, for instance, allows the Republic of Congo to reserve 40 percent to Congolese vessels. Because Congo does not have sufficient vessels to carry its 40 percent, Japanese carriers charter their vessels to Congo to carry that forty percent. Japanese carriers, therefore, are receiving revenues not only for the portion of the trade Japanese-flag vessels actually carry, but also for the charter hires to the Congolese.

Developing nations are increasingly requesting bilateral agreements with the United States. South Korea, for instance, has repeatedly requested an agreement with the United States. South Korea is the eighth largest trading partner of the United States and is rapidly assuming a major role in international trade. The Committee believes that U.S. shipping and trade would benefit from the negotiation of bilateral cargo-sharing agreements with such developing nations.

These international developments evidence a major shift in international shipping policy towards a more controlled, nationalist approach. The Committee believes that the United States policy on international shipping must reflect this global shift. The Committee is concerned that United States' resistance to bilateral agreements jeopardizes U.S. shipping trades and leaves U.S. carriers vulnerable to restrictive practices unilaterally imposed by other nations and carriers. The Administration believes that it has the legal tools necessary to prevent injury to U.S. carriers and shipping transportation in U.S. trades. U.S. carriers, on the other hand, support the international trend toward bilateral negotiations and have urged the United States to adopt a similar policy. Representatives of U.S. carriers testified that H.R. 3662 would assist them in entering shipping markets from which they are now excluded. They noted that international aviation since its inception has been governed effectively by bilateral agreements negotiated on a government-to-government basis.

U.S. carriers also point to the U.S.-Brazil agreement as an example of the potential benefit of bilateral agreements. Prior to the negotiation of the agreement the U.S.-flag share of the U.S.-Brazil trade had been reduced from sixty percent to less than sixteen percent. This reduction resulted from laws implemented by Brazil to foster the growth of its own fleet. The participation of third-flag carriers was also severely restricted. The bilateral equal access agreement negotiated by the United States and Brazil has given U.S. carriers access to 40 percent of the trade and third-flag carri-

ers access to 20 percent. The United States is currently renegotiating the U.S.-Brazil agreement and is attempting to alleviate various criticisms of the agreement. By renegotiating the agreement, the United States recognizes the continued benefit of governing certain trades through bilateral agreements.

The Committee also believes that ocean transportation must be viewed as an integral part of the overall trade policy of the United States. The regime that governs the transportation of U.S. imports and exports is of equal importance to the policies that promote U.S. trade. An efficient ocean transportation system, governed by national interests, is a necessary complement to the expansion of U.S. foreign trade. As the United States seeks to expand its export markets, linking trade negotiations with an international transportation policy that allocates a percentage of that trade to the trading partner's vessels will encourage that trading partner to further open its markets to U.S. exports.

During the hearing on H.R. 3662, witnesses expressed concern that the single formula of the bill might not be adequate to respond to diverse circumstances in different trades. The provision in the bill regarding percentage of cargo share, however, should provide sufficient flexibility. The cargo share for the total U.S. foreign trade involved may not exceed 33⅓ percent. The percent negotiated with a certain segment of the trade, for instance the liner trade, may exceed 33⅓ percent, as long as the aggregate percentage for the total trade does not exceed 33⅓ percent. This ability to adjust the percentage of the cargo share within a given shipping segment should be adequate to respond to the particular circumstances of a trade.

Witnesses also expressed concern that H.R. 3662 may result in increased shipping costs and diminished competition in U.S. trades. The Committee believes the bill contains adequate procompetitive provisions to ensure this does not occur. The requirement that at least 33⅓ percent of a trade remain open to ships of third countries will enhance competition in a trade. The author of the bill chose this formulation, rather than the 40-40-20 formulation envisioned in other international agreements such as the UNCTAD Code, because allowing 20 percent of a trade to third-flag carriers could restrict adequate competition in the trade. Additionally, the bill provides that U.S. carriers may not be restricted from competing for that percentage of the trade reserved to U.S.-flag vessels. This will ensure additional competition among U.S.-flag carriers for the U.S. share.

H.R. 3662 also prohibits a shipping conference operating in the liner segment of the trade from pooling profits. This prohibition could encourage new entrants into a conference trade. Although open conferences are mandated in U.S. trades, profit pooling can inhibit the entry of new carriers to a trade. To join the conference, the carrier must receive a percentage of the profit pool that has already been allocated among the established conference carriers. Those carriers are required to give up a share of their current profits. The new entrant, of course, should be able to increase the conference's total market share and thereby its total profits. Established carriers, however weigh their current share of the profits against the potential for growth spread over additional carriers. If

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they determine the potential growth in profits would not exceed their current share, they are unwilling to allocate an adequate share of the profit pool to the new carrier. This discourages the new carrier from joining the conference. Profit pooling also eliminates service competition among the carriers within a conference. Because profit shares are already allocated, a conference carrier has no incentive to increase his market share by providing better service to shippers than other carriers within the conference. Any increased profits, resulting from increasing the market share, would be spread among all the conference carriers, rather than retained by the carrier responsible for the increase. The Committee believes that prohibiting profit pooling in a conference trade governed by a bilateral agreement will enhance competition in the liner segment of the trade. The Committee does not intend that the profit pooling prohibition extend to the formation of joint ventures, which are permissible under the Shipping Act of 1984 (46 App. U.S.C. 1701–1720).

COMMITTEE ACTION

H.R. 3662 was introduced on October 31, 1985, by the Honorable Mario Biaggi and was referred to the Committee on Merchant Marine and Fisheries. Within the Committee, the bill was referred to the Merchant Marine Subcommittee.

After introduction, the bill was cosponsored by Mrs. Bentley, Mr. Borski, Mrs. Boxer, Mr. Brooks, Mr. Coelho, Mr. Davis, Mr. Dellums, Mr. DioGuardi, Mr. Dwyer, Mr. Gaydos, Mr. Howard, Mr. Hughes, Ms. Kaptur, Mr. Leland, Mr. Lent, Mr. Manton, Ms. Mikulski, Mr. Owens, Mr. Quillen, Mr. Roe, Mr. Tauzin, Mr. Torricelli, Mr. Towns, and Mr. Wilson.

The Subcommittee held a hearing on the bill March 20, 1986. Testimony was received from the following witnesses: the Department of State; the Maritime Administration, Department of Transportation; the Foreign Agriculture Service, Department of Agriculture; the Seafarers International Union of North America and the Maritime Trades Department, AFL–CIO; the Apex Marine Corporation; and the Council of American-Flag Ship Operators.

The Subcommittee received comments for inclusion in the record from the following: the Foreign Agricultural Service, Department of Agriculture; the National Marine Engineers' Beneficial Association; Mitsui O.S.K. Lines, Ltd.; the Automobile Importers of America, Inc.; and the Maritime Institute for Research and Industrial Development.

The Subcommittee on Merchant Marine met in a markup session to consider H.R. 3662 on April 23, 1986. The Subcommittee accepted an amendment by voice vote. The amendment requires that for purposes of the bill U.S. import and export trade be measured in long tons. The amendment also corrected a printing error in the bill as introduced. H.R. 3662 was favorably reported to the Full Committee by voice vote.

The Full Committee met in a markup session to consider H.R. 3662 on May 8, 1986. A point of order was raised that the Committee did not have permission to sit under the five-minute rule of the House of Representatives. The point of order was sustained and the

markup session adjourned without considering H.R. 3662. The Full Committee met again to markup H.R. 3662 on June 4, 1986. No amendments were offered to the bill. The Committee ordered H.R. 3662 favorably reported by voice vote.

SECTION-BY-SECTION

Section 1—Short title

This section provides a short title for H.R. 3662, which may be cited as the "Maritime Agreements Act of 1986".

Section 2—Definitions

This section defines certain terms in the Act. A "maritime agreement" is defined as an instrument between the United States and a trading partner that allocates cargo shares of the waterborne import and export trade between the two countries that is to be carried by each country's vessels. Bilateral agreements traditionally have been negotiated by the Executive Branch as Executive Agreements. The Committee intends that this practice continue.

Section 3—Authority

This section affirms the President's authority to enter into a maritime agreement with a trading partner of the United States when circumstances are such that a maritime agreement would benefit the United States or international ocean shipping.

Section 4—Circumstances requiring maritime agreements

This section requires the President to negotiate and enter into a maritime agreement under the Act in two instances.

Paragraph (1) requires the United States to enter into a maritime agreement with each trading partner whose waterborne trade with the United States equals or exceeds one percent of the total U.S. foreign waterborne trade, and when less than one-third of that trade is carried by U.S.-flag vessels. "United States foreign waterborne trade" is defined in section 2 as the total import and export trade of the United States measured in long tons that is transported by water in a calendar year.

Paragraph (2) requires the United States to enter into a maritime agreement with any trading partner that requests one, even though that trading partner does not meet the trigger mechanism in paragraph (1).

Section 5—Essential agreement provisions

Each maritime agreement entered into under section 4(a)(1) must contain certain essential provisions. One, the cargo share allocated to U.S. vessels may not exceed one-third of the particular trade involved. Two, the trading partner's cargo share may also not exceed one-third of the trade. These provisions give the President the flexibility to negotiate cargo shares at any percentage up to a maximum of 33⅓ percent. Three, vessels of third countries must be given unrestricted access to the percentage of the trade not allocated between the United States and the trading partner.

A shipping conference operating in a maritime agreement trade must meet certain requirements. It cannot operate a profit pool

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among its members. It cannot restrict a U.S. vessel's participation in the trade. Finally, it cannot operate under terms that contravene the maritime agreement for that trade. If a conference violates these restrictions, it is subject to penalties under the Shipping Act of 1984 (46 App. U.S.C. 1701-1720). These include civil penalties of $5,000 and $25,000 for each violation.

This section also requires the Federal Maritime Commission (FMC) and an appropriate agency of the trading partner to monitor compliance with an agreement. A dispute resolution mechanism available to all affected parties must also be established. This mechanism will be available to shippers, as well as to the carriers and governments involved.

If an agreement is entered into under section (4)(a)(2), the essential provisions delineated in section 5 do not have to be included in the agreement. The Committee believes that if another nation requests an agreement with the United States, the President and that nation should have greater flexibility in negotiating the terms of that agreement. The Committee intends, however, that the provisions delineated in section 5 be used as guidelines by the President in negotiating all maritime agreements entered into by the United States.

Section 6—Limitations

This section provides that a U.S.-flag vessel cannot be denied access to the share of the trade reserved to the United States, as long as that vessel complies with other U.S. laws.

Section 7—Negotiations and entry into force of agreements

This section requires that agreements with trading partners meeting the trigger mechanism in section 4(a)(1) must be negotiated within two years. The two year time period begins to run on the date of enactment, or on the date when that trading partner meets the requirement in section 4(a)(1) of accounting for one percent or more of U.S. trade and U.S. vessels are carrying less than one-third of the trade.

Section 8—Response to nations refusing maritime agreements

When a trading partner that accounts for over one percent of U.S. trade (and U.S. vessels do not carry one-third of that trade) refuses to accept the essential provisions required in an agreement, the President and the FMC are required to take certain actions. The President must declare that one-third of the trade with that trading partner is reserved to U.S.-flag vessels. The FMC must initiate an investigation to determine whether it should formulate additional regulations under the authority granted to the FMC by Section 19 of the Merchant Marine Act of 1920 (46 App. U.S.C. 876) to ensure that U.S. vessels have access to the trade.

COST OF THE LEGISLATION

Pursuant to clause 7 of rule XIII of the Rules of the House of Representatives, the Committee estimates that there will be only *de minimis* costs incurred by the Government as a result of enactment of the legislation.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee on Merchant Marine and Fisheries has assessed the potential for inflationary impact and has concluded that enactment of H.R. 3662 will not have an inflationary impact on prices and costs in the operation of the national economy.

COMPLIANCE WITH CLAUSE 2(l)(3) OF RULE XI

With respect to the requirements of clause 2(l)(3) of rule XI of the Rules of the House of Representatives:

(A) No oversight hearings were held on the subject of this legislation.

(B) The requirements of section 308(a) of the Congressional Budget Act of 1974 are not applicable to this legislation since it does not provide new budget authority or new or increased tax expenditures.

(C) The Committee has received no report from the Committee on Government Operations of oversight findings and recommendations arrived at, pursuant to clause 4(c)(2) of rule X of the Rules of the House of Representatives.

(D) The Director of the Congressional Budget Office has furnished the Committee with an estimate and comparison of costs for H.R. 3662 pursuant to section 403 of the Congressional Budget Act of 1974. The submission is as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 24, 1986.

Hon. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries, U.S. House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 3662, the Maritime Agreements Act of 1986, as ordered reported by the House Committee on Merchant Marine and Fisheries, June 4, 1986. Enactment of this bill is expected to have no significant impact on the federal budget and no effect on the budgets of state or local governments.

H.R. 3662 would authorize the President to negotiate agreements with certain trading partners to allocate the share of cargo shipped between the two that shall be carried by each country's vessels. The bill would require the Federal Maritime Commission (FMC), in conjunction with an appropriate agency of the trading partner, to monitor compliance with the agreement and to establish a dispute resolution mechanism for use by all affected parties. Based on information from the FMC, we expect that these responsibilities would not add significantly to the commission's workload, and thus would have no significant cost to the federal government.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

RUDOLPH G. PENNER, *Director.*

CHANGES IN EXISTING LAW

If enacted, the bill would make no changes in existing law.

DEPARTMENTAL REPORTS

H.R. 3662 was the subject of a report from the Department of Transportation and the Federal Maritime Commission. The reports follow herewith:

U.S. DEPARTMENT OF TRANSPORTATION,
Washington, DC, March 7, 1986.

Hon. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Transportation with respect to H.R. 3662, a bill "To provide for the negotiation of maritime agreements for the carriage of United States waterborne trade and for other purposes."

H.R. 3662, the Maritime Agreements Act of 1985, would generally have the President negotiate bilateral maritime agreements between the United States and our trading partners. Pursuant to these agreements, the ocean transportation of trade between the two nations would be allocated to ocean common carriers as follows: one-third to U.S.-flag vessels, one-third to trading partner vessels, and the balance to third-flag vessels. The Federal Maritime Commission would be required to police agreement compliance.

As a general policy, the United States has traditionally opposed legitimizing cargo-sharing arrangements in ocean transportation, because free and open competition is the greatest stimulus to our economy. In those rare instances where the United States has found that it is absolutely necessary to negotiate bilateral arrangements, the *sine qua non* of such negotiations is an overriding avoidance of constraints on trade and the preservation of maximum marketplace competition. This is not the case with H.R. 3662, and the Department of Transportation is opposed to the bill.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report for the consideration of the Committee.

Sincerely,

JIM J. MARQUEZ, *General Counsel.*

FEDERAL MARITIME COMMISSION,
Washington, DC, December 17, 1985.

Hon. WALTER B. JONES,
Chairman, House Committee on Merchant Marine and Fisheries, Longworth House Office Building, Washington, DC.

DEAR CHAIRMAN JONES: This is in response to your request for the views of the Federal Maritime Commission on H.R. 3662, a bill

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"To provide for the negotiation of maritime agreements for the carriage of United States waterborne trade and for other purposes."

The Federal Maritime Commission takes no position on the need for this legislation. If it is enacted you may rest assured that the Commission will do whatever is required of it to implement its responsibilities under the statute in an efficient and professional manner.

We will, however, offer some general observations on the bill, and also make some technical suggestions.

As an initial matter, it appears that the bill may be considered by some as contrary to the Administration's policy of opposing cargo reservation schemes, wherever they occur, but particularly in the U.S. trades. We are confident that others more qualified than the Commission will address this point in greater detail, and therefore, we will offer nothing further in this regard.

We also note that to the extent H.R. 3662 is intended to address difficulties U.S.-flag carriers may encounter when seeking to operate in foreign-to-foreign trades, as was suggested by Congressman Biaggi's remarks when introducing the legislation, a mechanism for dealing with this problem already exists. Section 13(b)(5) of the Shipping Act of 1984 (46 U.S.C. app. §1712(b)(5)) allows the Commission to retaliate against a foreign carrier or government which unduly impairs the access of a U.S.-flag carrier to a foreign cross trade. It would appear that this provision would be the more appropriate and effective one for dealing with such matters.

Although the bill specifically prohibits revenue pools, it would appear that there is no practical way to ensure that the respective cargo shares are met other than by some sort of pooling arrangement among the carriers in a trade. The United States may have to mandate conference membership or at least pool membership as a criterion for operating in certain U.S. trades. Otherwise, cargo could fall outside a pool, thereby making the enforcement of cargo sharing extremely difficult. In addition, pool records would have to be monitored by the FMC to ensure compliance with the law. To the extent that the cargo reservation scheme contemplated by the bill may only effectively be implemented through closed pools or conferences, it will significantly impact on the conference system as we know it and as envisioned by the 1984 Act.

Non-market cargo allocation schemes could reduce economic competitiveness among carriers and may result in higher costs to shippers and ultimately to consumers. They may also result in a reduction in the total volume of trade. We also question whether such schemes might serve to reduce the incentive of the shipping industry to improve its services or the technology it employs. In addition, one might argue that cargo reservation schemes embodied in an agreement negotiated under the bill could never "promote free, fair, and open competition in international ocean shipping services," as is suggested by section 3(a) of the bill, since the two concepts appear inherently contradictory.

It is also unclear as to whether, if the Bill becomes law, *all* bilateral maritime agreements negotiated by the Executive Branch would be considered agreements within the statute and subject to its requirements.

Comments on specific sections follows:

Section 2

The definition of "commercial shipping agreement" indicates that it is one between or among "common carriers", as defined by the Shipping Act of 1984. Because "common carrier" as defined by the 1984 Act includes both ocean common carriers (vessel operating) and non-vessel operating common carriers (NVOCC's), section 2 might more appropriately refer to "ocean common carrier," particularly since the bill otherwise speaks to "vessels", NVOCCs, by definition, do not own or operate vessels.

In addition, we note that there is no definition of "United States", such as the one in the 1984 Act (section 3(27)). It is therefore unclear whether cargo carried to or from Puerto Rico, the Northern Marianas, and other territories and possessions is included within the scope of the bill.

Section 3

Section 3(d) states that the President may negotiate a maritime agreement when "it furthers the purpose of section 9 of the Shipping Act, 1984." Section 9 of the 1984 Act governs the activities of controlled carriers. We do not understand how any maritime agreement could further the purposes of that section. Section 9 would apply irrespective of any such agreement and the only "purpose" it serves is to ensure that controlled carriers not engage in predatory rate-cutting.

Section 3(c) refers to the "ocean shipping service industry," but does not otherwise define this term. Is it intended to mean more than just vessel operators?

Sections 4 and 7

Under certain circumstances, the President is required to both "negotiate" and "enter into" a maritime agreement. It would appear likely that negotiations may not always result in a mutually satisfactory agreement, containing all the provisions required by section 5. Indeed, section 8 is expressly designed to address the situation where an agreement is not reached. Perhaps the words "and enter into" should be deleted from sections 4 and 7.

Sections 4, 5, and 8

These sections all make reference to a one-third share of the United States waterborne trade and section 4(a) refers to one percent of the trade. However, nowhere is there a definition of exactly how that share or percentage is to be computed. Is the share to be determined on a tonnage basis (long ton, short ton, measurement ton or revenue basis? The choice which is made will be particularly important for the general cargo trades.

It should also be noted that U.S.-origin or destination cargo may move through ports other than those of the United States or a bilateral trading partner. To the extent that such cargo is to be considered within the "United States foreign waterborne trade", as defined in section 2(4) (and that is unclear in the bill), it may be difficult to track and allocate.

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Section 5

One of the essential agreement provisions mandated by this section is the cargo shares of the United States and its trading partners may not each exceed one third of the waterborne trade. Situations may arise, however, where third-flag tonnage is insufficient to carry the remaining one-third of the cargo. Perhaps a contingency provision could be added which would permit greater than a one-third share to the bilateral partners in such circumstances.

Commercial shipping agreements containing provisions violating paragraph (1) of subsection (d) are to be considered "violations under the Shipping Act, 1984" and subject to the penalties of section 13 of that Act. It is unclear which existing section of the 1984 Act would be violated by these provisions, if any. It may be more efficient to prohibit such provisions and subject violations of that prohibition to express penalties in this bill.

Section 7

The two year period within which to enter agreements with at least 25, and probably many more, trading partners appears to be a somewhat short timeframe. In light of section 5(e)'s requirement that a mechanism be established for the FMC and an appropriate agency of the trading partner to monitor compliance with an agreement, the two year period may be particularly unrealistic. Many of our trading partners would have to start up agencies, since they do not presently exist.

Section 8

If a trading partner does not enter into an agreement, the President must reserve one-third of the trade for U.S.-flag vessels and the FMC *must* initiate an investigation under section 19 of the Merchant Marine Act, 1920 to insure access of U.S.-flag vessels to the trade. The need for the latter requirement is questionable. In the first place, access of U.S.-flag vessels to the waterborne trade of the trading partner may not necessarily be a problem and a mandatory investigation may therefore be unwarranted and result in an unnecessary expenditure of FMC resources. In any event, the Commission is always free to initiate an investigation under section 19, regardless of the existence of this bill. Perhaps the word "shall" could be changed to "may" to alleviate the potential for time-consuming and costly investigations where no access restrictions exist.

I appreciate the opportunity to comment on this legislation. Please feel free to contact me if you have any questions.

Sincerely,

EDWARD V. HICKEY, *Chairman.*

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